# ENVIRONMENTAL LAW

**Northwestern School of Law**
**of Lewis & Clark College**

INDEX

Volume 30
2000

*ENVIRONMENTAL LAW*

# TABLE OF TITLES

## ARTICLES

A GAME OF CLIMATE CHICKEN: CAN EPA REGULATE GREENHOUSE GASES BEFORE THE U.S. SENATE RATIFIES THE KYOTO PROTOCOL?
*Veronique Bugnion and David M. Reiner* ..... 491
ENDANGERED SPECIES ACT ENFORCEMENT AND WESTERN WATER LAW
*Jennie L. Bricker and David E. Filippi* ..... 735
ESSENTIAL FISH HABITAT: DOES CALLING IT ESSENTIAL MAKE IT SO?
*Kristen M. Fletcher and Sharonne E. O'Shea* ..... 51
*IDAHO SPORTING CONGRESS V. THOMAS* AND SOVEREIGN IMMUNITY: FEDERAL FACILITY NONPOINT SOURCES, THE APA, AND THE MEANING OF "IN THE SAME MANNER, AND TO THE SAME EXTENT AS ANY NONGOVERNMENTAL ENTITY"
*Robin Kundis Craig* ..... 527
POLLUTANTS WITHOUT HALF-LIVES: THE ROLE OF FEDERAL ENVIRONMENTAL LAWS IN CONTROLLING BALLAST WATER DISCHARGES OF EXOTIC SPECIES
*Brent Foster* ..... 99
PROTECTING HABITAT FOR OFF-RESERVATION TRIBAL HUNTING AND FISHING RIGHTS: TRIBAL COMANAGEMENT AS A RESERVED RIGHT
*Ed Goodman* ..... 279
QUARTERING SPECIES: THE "LIVING CONSTITUTION," THE THIRD AMENDMENT, AND THE ENDANGERED SPECIES ACT
*Andrew P. Morriss and Richard L. Stroup* ..... 769

## CLEAR THE AIR

A MILLENNIAL UPDATE ON PROCEDURAL ISSUES IN ENVIRONMENTAL LITIGATION
*Carl Tobias* ..... 227

## ESSAYS

A ROAD MAP FOR ENVIRONMENTAL LAW IN THE TWENTY-FIRST CENTURY: FOLLOW THE OREGON TRAIL
*Senator Ron Wyden and Joshua Sheinkman* ..... 35
COMING OF AGE IN THE ENVIRONMENT
*Honorable Richard D. Cudahy* ..... 15

ENTREPRENEURIAL ENVIRONMENTALISM: A NEW APPROACH FOR THE NEW MILLENNIUM
*Congressman Earl Blumenauer* ..... 1
THE PAST AND FUTURE OF ENVIRONMENTAL LAW
*James L. Huffman* ..... 23
TRAGICALLY DIFFICULT: THE OBSTACLES TO GOVERNING THE COMMONS
*Barton H. Thompson, Jr.* ..... 241
"WHO DO YOU THINK YOU ARE?": TALES FROM THE TRENCHES OF THE ENVIRONMENTAL STANDING BATTLE
*Peter Van Tuyn* ..... 41

**NOTES & COMMENTS**

ADDRESSING WATER POLLUTION FROM LIVESTOCK GRAZING AFTER *ONDA v. DOMBECK*
*Peter M. Lacy* ..... 617
DUELING RISK ASSESSMENTS: WHY THE WTO AND CODEX THREATEN U.S. FOOD STANDARDS
*John Ewers* ..... 387
EPA'S APPROACH TO ENDANGERED SPECIES PROTECTION IN STATE CLEAN WATER ACT PROGRAMS
*Elizabeth Rosan* ..... 447
EQUIVALENCE: NOT QUITE CLOSE ENOUGH FOR INTERNATIONAL HARMONIZATION OF ENVIRONMENTAL STANDARDS
*Alexander M. Donahue* ..... 363
INTENTIONAL DISREGARD: REMEDIES FOR THE TOXIC WORKPLACE
*Michelle Gorton* ..... 811
PROSPECTIVE PURCHASER AGREEMENTS: EPA'S NEW OUTLOOK ON LANDOWNER LIABILITY
*Margi C. Lifsey* ..... 177
SHIFTING THE EXPERIMENT TO THE LAB: DOES EPA HAVE A MANDATORY DUTY TO REQUIRE CHEMICAL TESTING FOR ENDOCRINE DISRUPTION EFFECTS UNDER THE TOXIC SUBSTANCES CONTROL ACT?
*Holly E. Pettit* ..... 413
TEETH FOR A PAPER TIGER: REDRESSING THE DEFICIENCIES OF THE RECOVERY PROVISIONS OF THE ENDANGERED SPECIES ACT
*Eric Helmy* ..... 843
THE FEDERAL INDIAN TRUST DOCTRINE AND THE BALD AND GOLDEN EAGLE PROTECTION ACT: COULD APPLICATION OF THE DOCTRINE ALTER THE OUTCOME IN *U.S. v. HUGS*?
*Matthew Perkins* ..... 701
THE SPIRIT OF THE SALMON: HOW THE TRIBAL RESTORATION PLAN COULD RESTORE COLUMBIA BASIN SALMON

*Melissa Powers* ..... 867
THE WOLVES MAY HAVE WON THE BATTLE, BUT NOT THE WAR: HOW THE WEST WAS WON UNDER THE NORTHERN ROCKY MOUNTAIN WOLF RECOVERY PLAN
*Jennifer Li* ..... 677
WHEN IS A TRADE SECRET NOT SO SECRET? THE DEFICIENCIES OF 40 C.F.R. PART 2, SUBPART B
*Christopher J. Lewis* ..... 143

## TABLE OF AUTHORS

BLUMENAUER, EARL, CONGRESSMAN, *Entrepreneurial Environmentalism: A New Approach for the New Millennium* ..... 1
BRICKER, JENNIE L. & FILIPPI, DAVID E., *Endangered Species Act Enforcement and Western Water Law* ..... 735
BUGNION, VERONIQUE & REINER, DAVID M., *A Game of Climate Chicken: Can EPA Regulate Greenhouse Gases Before the U.S. Senate Ratifies the Kyoto Protocol?* ..... 491
CRAIG, ROBIN KUNDIS, Idaho Sporting Congress v. Thomas *and Sovereign Immunity: Federal Facility Nonpoint Sources, the APA, and the Meaning of "In the Same Manner, and to the Same Extent as Any Nongovernmental Entity"* ..... 527
CUDAHY, RICHARD D., HONORABLE, *Coming of Age in the Environment* ..... 15
DONAHUE, ALEXANDER M., *Equivalence: Not Quite Close Enough for the International Harmonization of Environmental Standards* ..... 363
EWERS, JOHN, *Dueling Risks Assessments: Why the WTO and Codex Threaten U.S. Food Standards* ..... 387
FILIPPI, DAVID E. & BRICKER, JENNIE L., *Endangered Species Act Enforcement and Western Water Law* ..... 735
FLETCHER, KRISTEN M. & O'SHEA, SHARONNE E., *Essential Fish Habitat: Does Calling it Essential Make it So?* ..... 51
FOSTER, BRENT, *Pollutants Without Half-lives: The Role of Federal Environmental Laws in Controlling Ballast Water Discharges of Exotic Species* ..... 99
GOODMAN, ED, *Protecting Habitat for Off-Reservation Tribal Hunting and Fishing Rights: Tribal Comanagement as a Reserved Right* ..... 279
GORTON, MICHELLE, *Intentional Disregard: Remedies for the Toxic Workplace* ..... 811
HELMY, ERIC, *Teeth for a Paper Tiger: Redressing the Deficiencies of the Recovery Provisions of the Endangered Species Act* ..... 843
HUFFMAN, JAMES L., *The Past and Future of Environmental Law* ..... 23
LACY, PETER M., *Addressing Water Pollution from Livestock Grazing After* ONDA v. Dombeck ..... 617

LEWIS, CHRISTOPHER J., *When Is a Trade Secret Not So Secret? The Deficiencies of 40 C.F.R. Part 2, Subpart B* ..... 143
LI, JENNIFER, *The Wolves May Have Won the Battle, But Not the War: How the West Was Won Under the Northern Rocky Mountain Wolf Recovery Plan* ..... 677
LIFSEY, MARGI C., *Prospective Purchaser Agreements: EPA's New Outlook on Landowner Liability* ..... 177
MORRISS, ANDREW P. & STROUP, RICHARD L., *Quartering Species: The "Living Constitution," The Third Amendment, and the Endangered Species Act* ..... 769
O'SHEA, SHARONNE E. & FLETCHER, KRISTEN M., *Essential Fish Habitat: Does Calling it Essential Make it So?* ..... 51
PERKINS, MATTHEW, *The Federal Indian Trust Doctrine and the Bald and Golden Eagle Protection Act: Could Application of the Doctrine Alter the Outcome in* U.S. v. Hugs? ..... 701
PETTIT, HOLLY E., *Shifting the Experiment to the Lab: Does EPA Have a Mandatory Duty to Require Chemical Testing for Endocrine Disruption Effects Under the Toxic Substances Control Act?* ..... 413
POWERS, MELISSA, *The Spirit of the Salmon: How the Tribal Restoration Plan Could Restore Columbia Basin Salmon* ..... 867
REINER, DAVID M. & BUGNION, VERONIQUE, *A Game of Climate Chicken: Can EPA Regulate Greenhouse Gases Before the U.S. Senate Ratifies the Kyoto Protocol?* ..... 491
ROSAN, ELIZABETH, *EPA's Approach to Endangered Species Protection in State Clean Water Act Programs* ..... 447
SHEINKMAN, JOSHUA & WYDEN, RON, SENATOR, *A Road Map for Environmental Law in the Twenty-First Century: Follow the Oregon Trail* ..... 35
STROUP, RICHARD L. & MORRISS, ANDREW P., *Quartering Species: The "Living Constitution," The Third Amendment, and the Endangered Species Act* ..... 769
THOMPSON, BARTON H., JR., *Tragically Difficult: The Obstacles to Governing the Commons* ..... 241
TOBIAS, CARL, *A Millennial Update on Procedural Issues in Environmental Litigation* ..... 227
VAN TUYN, PETER, *"Who Do You Think You Are?": Tales from the Trenches of the Environmental Standing Battle* ..... 41
WYDEN, RON, SENATOR & SHEINKMAN, JOSHUA, *A Road Map for Environmental Law in the Twenty-First Century: Follow the Oregon Trail* ..... 35